

INSTRUCTIONS FOR FILLING OUT FORM

PURPOSE. This form is to be used when the court has ordered custody of your child(ren) and the opposing party is seeking to change custody and you object to the court modifying the order.

FORMS INVOLVED. The form is an **Answering Affidavit to Motion for Change of Custody**. You will need to fill in the necessary information with help from the instructions below and then file the forms with the appropriate court.

If you are served with a Motion for Change of Custody either through the mail, notice in the newspaper or by a process server, you do not have to file an answer or counterclaim. But you need to appear at the scheduled hearing and voice your objection. If you fail to appear at the hearing the court may order a bench warrant for your arrest and you may have been deemed to have waived your right to object later. You can also file an Answering Affidavit in writing. But you still need to appear at the scheduled hearing.

How to file your Answering Affidavit. File the original Affidavit with the court and mail a copy to the opposing party. Remember you do not have to file an Answering Affidavit. You must appear at the hearing and object.

OPPOSING PARTY'S BURDEN OF PROOF. If the opposing party filed a Motion for Change of Custody, they have the burden of proving that claim in court. In a typical civil case the other party has the burden of proving their claim by a preponderance of the evidence. This means that it is the other party's responsibility to prove their case. Proving something by a preponderance of the evidence means evidence with greater weight or that is more convincing than the evidence of the opposing party(s). The opposing party or moving party has the burden of showing the following to the court in their Motion for Modification:

If there was an agreement between the parties, the person seeking modification (the moving party) only has to show the court that modification would be in the best interest of child(ren).

If the issues of custody and visitation were contested and the court made these decisions after a trial then the person seeking modification must show two (2) things in order for the court to modify a custody or visitation order. First, the moving party must show that there has been substantial and material change of circumstances since the order was entered. Second, the moving party must also show that modification would be in the best interest of the child(ren).

The courts primary concern when awarding custody is the best interest of the child(ren) and not the shortcomings of the parents. What this means is that you and your witnesses need to testify who cares for the child(ren) such as bathing, cleaning for, sheltering, feeding and generally caring for the children. Evidence or testimony of alleged immoral conduct of the opposing party is not relevant unless it has a direct bearing or effects the best interest of the child(ren). For example, if the opposing party abuses alcohol this would not be relevant unless you can show that the opposing party neglected or abused the child(ren) while abusing alcohol.

A history of denying you visitation may be grounds to modify custody. You should probably file an order to show cause for failure to obey the visitation order form every time you are denied custody so the court has knowledge of this history.

INSTRUCTIONS FOR FILLING OUT THE FORM. To fill out this form follow these instructions. The numbers to each instruction below is the number on the blank line on the form where the information for that number needs to be inserted on the form. You can print this page in its entirety or you can scroll down to the Motion form and if you scroll down farther you will find the affidavit. There will be a blank screen between these instructions and the forms and between the forms so keep scrolling or just copy this page in its entirety.

Instructions for filling out the affidavit:

- (1) on this line insert the name of the tribal court. For example, if you are filing this claim on the Rosebud reservation you would insert Rosebud Sioux on this line.
- (2) on this line insert the name of the reservation where the court is located.
- (3) on this line insert the community where the court is located in which you are filing these forms.
- (4) on this line insert the name of the plaintiff from the court order.
- (5) on this line insert the name of the defendant from the court order.
- (6) on this line insert your name.
- (7) insert the date the order was signed by the judge
- (8) insert why you object to the modification of the court order. Insert there is no material change of circumstances and any other reasons you may have.
- (9) on this line insert the day.
- (10) on this line insert the month.
- (11) on this line insert the year.
- (12) on this line insert your name by signing.

(1) _____ TRIBAL COURT)
(2) _____ RESERVATION)SS
(3) _____, SOUTH DAKOTA)

IN CIVIL COURT

(4) _____

DOCKET _____

PLAINTIFF(S)

ANSWERING AFFIDAVIT TO
MOTION FOR CHANGE OF
CUSTODY

VS

(5) _____

DEFENDANT(S)

Comes now (6) _____ and objects to this Court modifying its order herein as follows:

1. That on (7) _____, this Court entered an order of child custody, visitation and child support and is contained in the court file herein.

2. That I object to this court modifying its order for the following reasons:

(8) _____

_____.

Wherefore, the opposing party's motion for order to show cause should be dismissed.

Dated this (9) _____ day of (10) _____, (11) _____.

(12) _____
Plaintiff/Defendant
(Sign your name here)

Sworn and subscribed to before me this _____ day of _____, _____.

Notary Public

My commission expires:
(SEAL)

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the forgoing answer upon the opposing party by depositing said copy in the United States Mail addressed to the opposing party's last address at _____.

Dated this (9)_____ day of(10) _____, (11)_____.

(12) _____
(Sign your name here)
Plaintiff/Defendant